

AFCARS Final Rule - 2016 & 2020

The following data elements that were to be collected by States for Indian Child Welfare Act (ICWA) cases were included in the final rule published in December 2016. However, these data elements were removed from the new final rule published in May 2020 after a second review that was initiated in response to Executive Order 13777.

Listed below are the data elements that were removed from the December 2016 AFCARS Final Rule that are related to state courts.

Child Information

Court determination that ICWA applies:

- Whether the Court determined that ICWA applies
- Date that the Court determined ICWA applies
- Indian Tribe that the Court determined is the child's Tribe

Request to transfer to Tribal Court:

- Whether the child's parent, custodian, or Tribe requested that the proceedings be moved to the Tribe's jurisdiction

Denial of transfer:

- Either of the parents objected to transferring the case to the Tribal Court
- The Tribal Court declined the transfer to the Tribal Court
- The State Court determined good cause exists for denying the transfer to the Tribal Court

Parent or legal guardian information

Involuntary termination/modification of parental rights under ICWA:

- Whether the State Court found beyond a reasonable doubt that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the Indian child
- Whether the Court decision to involuntarily terminate parental rights included the testimony of one or more qualified expert witnesses
- Whether prior to terminating parental rights, the Court concluded that Active Efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful

Voluntary termination/modification of parental rights under ICWA:

- Whether the consent to termination of parental or Indian custodian rights was executed in writing and recorded before a Court of competent jurisdiction

Removal information

Removals under ICWA:

- Whether the Court order for foster care placement was made as a result of clear and convincing evidence that continued custody of the Indian child by the parent or Indian custodian was

- likely to result in serious emotional or physical damage to the Indian child
- Whether the evidence presented for foster care placement included the testimony of a qualified expert witness
- Whether the evidence presented for foster care placement indicates that prior to each removal reported that active efforts have been made to prevent the breakup of the Indian family and that those efforts were unsuccessful

Living arrangement and provider information

Good cause under ICWA:

- If “placement does not meet ICWA placement preferences” is indicated, whether the Court determined by clear and convincing evidence a good cause to depart from the ICWA placement preferences or to depart from the placement preferences of the Indian child’s Tribe

Basis for good cause (if placement does not meet ICWA placement preferences):

- Request of one or both of the Indian child’s parents
- Request of the Indian child
- The unavailability of a suitable placement after a determination by the Court that a diligent search was conducted to find suitable placements but none has been located
- The extraordinary physical, mental or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live
- The presence of a sibling attachment that can be maintained only through a particular placement

Exit to adoption and guardianship information

Good cause under ICWA:

- If “placement does not meet ICWA placement preferences”, whether the Court determined by clear and convincing evidence, on the record or in writing, a good cause to depart from the ICWA placement preferences or to depart from the placement preferences of the Indian child’s Tribe

Basis for good cause. Indicate State Court’s basis for determining good cause to depart from ICWA adoptive placement preferences:

- Request of one or both of the child’s parents
- Request of the Indian child
- The unavailability of a suitable placement after a determination by the Court that a diligent search was conducted to find suitable placements meeting the placement preferences in ICWA at 25 U.S.C. 1915 but none has been located
- The extraordinary physical, mental, or emotional needs of the Indian child, such as specialized treatment services that may be unavailable in the community where families who meet the placement preferences live
- The presence of a sibling attachment that can be maintained only through a particular placement